

FEB 1 2 2002

BEFORE THE FEDERAL ELECTION COMMISSION

**SENSITIVE**

In the Matter of )

Dear 2000, Inc. and )  
Friends of Noach Dear '93 )

MURs 4935 and 5057

GENERAL COUNSEL'S REPORT #19

**I. ACTIONS RECOMMENDED:**

Authorize attached subpoena and order to Dear 2000, Inc. Authorize attached subpoena  
and order to Friends of Noach Dear '93.<sup>1</sup>

**II. BACKGROUND**

On July 25, 2000, the Federal Election Commission (the "Commission") found that there  
is reason to believe that Dear 2000, Inc. violated 2 U.S.C. § 441f and 11 C.F.R. § 110.9(a) by  
knowingly accepting an excessive contribution from Friends of Noach Dear '93, and violated  
2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(4) for failing to report the in-kind contribution. The  
Commission also found that there is reason to believe that Friends of Noach Dear '93 violated  
2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making an excessive contribution to  
Dear 2000, Inc. These findings were based on a complaint filed by Sandy Aboulafia, Vice  
President of the Women's Democratic Club of New York City, who alleges that Friends of  
Noach Dear '93 paid for a poll used by Dear 2000, Inc.

<sup>1</sup> Friends of Noach Dear '93 is not a federal committee, but is a committee established by Noach Dear to solicit contributions for his election to the New York City Council. Mr. Dear's term as a member of the New York City Council ended in January 2002.

On July 25, 2000, the Commission also found that there is reason to believe that Dear for Congress, Inc. ("Dear for Congress") violated 2 U.S.C. § 441f by knowingly accepting contributions made by one person in the name of another person.<sup>2</sup> The Commission found that there is reason to believe that 61 contributors to the Dear for Congress violated 2 U.S.C. § 441f by knowingly permitting their names to be used to effect contributions made by one person in the name of another person. These violations were based on the Audit staff's identification of fifteen instances in which the Dear for Congress accepted two or more money orders bearing sequential serial numbers from individual contributors. In several instances, the money orders purporting to be from different individuals within a particular sequence appeared to be executed in the same handwriting, including the purported signature of the person drawing the money order.

**III. DOCUMENT REQUESTS AND INTERROGATORIES TO DEAR 2000, INC.  
AND FRIENDS OF NOACH DEAR '93**

Dear 2000, Inc. and Friends of Noach Dear '93, (the "Committees"), who are represented by the same counsel, responded to the Commission's reason to believe findings by stating that the poll was designed to provide advice to Mr. Dear on a wide range of New York City political issues. Attachment 1 at 6. They argued that Mr. Dear, a New York City Councilman, was evaluating whether to run for a citywide office and suggested that the poll results were needed for that purpose. *Id.* Thus, the Committees argued that there should be no reason to believe findings against them and the Commission should dismiss these allegations. *Id.*

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<sup>2</sup> The Commission also found reason to believe that the Committee violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by accepting excessive contributions, 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d) by accepting prohibited corporate contributions, 11 C.F.R. § 104.5(a) by filing late reports and 2 U.S.C. §§ 434(a)(6)(A), 434(b)(4)(F) and 434(b)(8) by failing to report debts and failing to file 48-hour notices. These violations are not discussed in this Report.

1 Funds received and payments made solely for the purpose of determining whether an  
2 individual should become a candidate are not contributions. 11 C.F.R. §§ 100.7(b)(1) and  
3 100.8(b)(1). However, if the individual subsequently becomes a candidate, any funds received  
4 are contributions and any payments made are expenditures subject to the reporting requirements  
5 of the Federal Election Campaign Act of 1971 (the "Act"), as amended. 11 C.F.R. § 101.3.  
6 Additionally, only funds permissible under the Act may be used for such activities. 11 C.F.R.  
7 §§ 100.7(b)(1) and 100.8(b)(1).

8 The purchase of opinion poll results by a candidate or a candidate's authorized political  
9 committee or agent is an expenditure by the candidate or a potential expenditure under 11 C.F.R.  
10 § 100.8(b)(1). 11 C.F.R. § 106.4(a). Additionally, if a political committee or other person not  
11 authorized by a candidate to make expenditures purchases such poll results and a candidate, a  
12 candidate's authorized political committee, agent, or another unauthorized political committee  
13 subsequently accepts the poll results, an in-kind contribution by the purchaser to the candidate or  
14 other political committee and an expenditure by the candidate or other political committee  
15 results. 11 C.F.R. § 106.4(b). If an individual uses such poll results to decide whether to become  
16 a candidate, a contribution or expenditure does not exist until he or she becomes a candidate.  
17 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1). *See also* Advisory Opinion 1998-18 (the donation of  
18 poll results for testing the waters purposes becomes a contribution when the prospective  
19 candidate becomes a candidate, and thus, is subject to the limitations of the Act).

20 According to a Friends of Noach Dear '93 City Council Disclosure Statement dated  
21 July 15, 1999, Friends of Noach Dear '93 paid \$20,000 to Penn, Schoen and Berland Associates,  
22 Inc. ("Penn, Schoen and Berland") for the poll on June 28, 1999. The August 12, 1999 edition of

1 the *New York Daily News*, which is the basis of the complaint, reported that the poll included  
2 questions about the voting record of Congressman Anthony Weiner and questions designed to  
3 measure whether Mr. Dear should challenge Congressman Weiner in the 2000 election. On  
4 December 21, 1999, Mr. Dear filed a Statement of Candidacy with the Commission and named  
5 Dear 2000, Inc. as the principal campaign committee for his candidacy for the 9th Congressional  
6 District of New York, the seat held by Congressman Weiner.

7 The response by the Committees to the Commission's reason to believe findings is  
8 insufficient to resolve this matter. The response makes assertions about the purpose of the poll,  
9 but absent an evaluation of the poll itself, the Commission cannot fairly evaluate it. Moreover,  
10 the poll questions are needed to determine whether questions about Congressman Weiner were  
11 asked. The information is needed for this Office to decide whether there is sufficient evidence to  
12 recommend that the Commission find probable cause to believe that the two committees violated  
13 the Act.<sup>3</sup> Therefore, this Office recommends that the Commission approve a Subpoena to  
14 Produce Documents and an Order to Submit Written Answers to the Committees to investigate  
15 whether the receipt of poll results by Dear 2000, Inc. from Friends of Noach Dear '93 constitutes  
16 an excessive contribution.

17 With respect to documents, the Office of General Counsel wants to review any polls  
18 conducted by Penn, Schoen and Berland in 1999 on behalf of Friends of Noach Dear '93. The  
19 Office of General Counsel also would like to review documentation of the business relationship  
20 between Penn, Schoen and Berland and Friends of Noach Dear '93, and between Penn, Schoen  
21 and Berland and Dear 2000, such as contracts, correspondence, memoranda, and invoices. The

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<sup>3</sup> The Committees have informed this Office that they are not interested in pre-probable cause conciliation.

polls and other documentation will assist us in reaching a conclusion whether the poll was designed to assist Mr. Dear in deciding to become a candidate for Congress. With respect to the interrogatories, this Office is interested in obtaining information, such as when the poll was conducted, whether Friends of Noach Dear '93 shared the poll results with Dear 2000, Inc., and when the poll results were shared with Dear 2000, Inc.,

Therefore, the Office of General Counsel recommends that the Commission authorize a subpoena to produce documents and an order to submit written answers to Dear 2000, Inc, and Abraham Roth, as treasurer. Attachment 2. The Office of General Counsel also recommends that the Commission authorize a subpoena to produce documents and an order to submit written answers to Friends of Noach Dear '93 and Abraham Roth, as treasurer. Attachment 3.

**IV. DEPOSITION SUBPOENAS RELATING TO THE INVESTIGATION OF DEAR FOR CONGRESS**

In connection with an investigation of whether Dear for Congress received alleged contributions involving money orders, the Commission issued several subpoenas. This Office has received responses to the document subpoenas and orders issued to Dear for Congress, Abraham Roth, a principal of Roth and Company, LLP, and James Cunningham, a principal in the consulting firm of Cunningham, Harris & Associates.<sup>4</sup> Based upon those responses and

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<sup>4</sup> Mr. Cunningham responded on August 16, 2001. Dear for Congress and Abraham Roth filed motions to quash which the Commission rejected on October 16, 2001. After negotiations, the respondents agreed to comply with the subpoenas. Their responses were submitted on January 14, 2002.

1 questions raised during our informal investigation, the Office of General Counsel believes that it  
2 is necessary to depose several members of Dear for Congress' staff, fundraising consultants, a  
3 campaign volunteer, and an employee of Roth and Company, LLP in order to complete the  
4 investigation involving Dear for Congress' alleged violation of 2 U.S.C. § 441f.

5         Although Dear for Congress submitted documentation to the Audit staff confirming  
6 contributions from several respondents, we learned through conversations with them during our  
7 informal investigation that they did not make a contribution to the Committee. We also learned  
8 that several respondents made contributions in cash although Dear for Congress submitted  
9 documentation purportedly from these respondents confirming that their contributions were made  
10 with money orders. The responses to interrogatories and document requests contained  
11 inconclusive information. Thus, this Office believes that we must continue the investigation of  
12 the possible "contribution in the name of another" scheme by conducting depositions.

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**V. RECOMMENDATIONS**

1. Authorize Subpoena and Order to Dear 2000, Inc. and Abraham Roth, as treasurer;

2. Authorize Subpoena and Order to Friends of Noach Dear '93 and Abraham Roth,  
as treasurer;

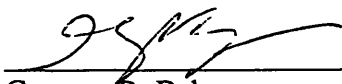
3.

4.

5. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

2/8/02  
Date

BY:   
Gregory R. Baker  
Acting Associate General Counsel

#### Attachments

1. Response of Dear 2000, Inc. and Friends of Noach Dear '93 dated September 22, 2000
2. Subpoena and Order to Dear 2000, Inc.
3. Subpoena and Order to Friends of Noach Dear '93
- 4.
- 5.

Staff Assigned: Peter G. Blumberg  
Delbert K. Rigsby  
Danita Lee